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UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

2004 JAN 20 P-2:05
CIVIL ACTION NO.
4:03-CV-40253-NMG

U.S. DISTRICT COURT
DISTRICT OF MASS.

**DEUTSCHE BANK NATIONAL TRUST
COMPANY, AS CUSTODIAN OR
TRUSTEE, f/k/a BANKERS TRUST
COMPANY OF CALIFORNIA, N.A.,**

Plaintiff,

v.

**ROSE CASTRO, JOSH CASTRO,
JOSEPH DIMARE and ALL OTHER
OCCUPANTS,**

Defendants.

**DEUTSCHE BANK NATIONAL TRUST COMPANY, AS
CUSTODIAN OR TRUSTEE, f/k/a BANKERS TRUST
COMPANY OF CALIFORNIA, N.A.'S MOTION TO REMAND**

Now comes the Plaintiff, Deutsche Bank National Trust Company, as Custodian or Trustee, f/k/a Bankers Trust Company of California, N.A. ("Deutsche Bank"), and moves this Court to remand this action to the Housing Court Department of the Trial Court of Massachusetts, Worcester County Division ("Housing Court"), as this Court does not have jurisdiction to hear this action. As grounds therefore, Deutsche Bank states the following.

Deutsche Bank is currently the owner of the Property located at 134 Summer Street, Gardner, MA 01440. Exhibit A¹. On October 27, 2003 Deutsch Bank filed a Summary Process Summons and Complaint with the Housing Court, seeking to evict Defendants Rose

¹ All exhibits referred to in this Motion are the Exhibits to Deutsch Bank's Memorandum in Support of its Motion to Remand, and are hereby incorporated by reference.

Castro, Josh Castro, Joseph Dimare and all other occupants, and to collect use and occupancy payments at the rate of \$1,000.00 since September 30, 2003. Exhibit C. On November 19, 2003, Defendants filed a Notice of Removal with this Court and the Housing Court. Exhibit D.

This Court has no jurisdiction to hear this case because the claims in this action amount to less than \$5,000.00. See 28 U.S.C. § 1332 (2003). In addition, Defendants have failed to file the required certified or attested copies of all records and docket entries in the state court within thirty (30) days after filing the Notice of Removal, and pursuant to the Local Rules, the case *must* therefore be remanded to the state court from which it was removed. Local Rules of the United States District Court for the District of Massachusetts, Rule 81.1. Since this court has no jurisdiction to hear this action, and the Defendants have failed to comply with filing requirements, this action must be remanded to the Housing Court.

REQUEST FOR ORAL ARGUMENT

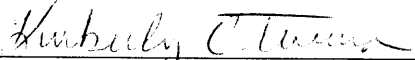
Plaintiff, Deutsch Bank, respectfully requests this Motion to be placed on the calendar for oral argument.

WHEREFORE, the Plaintiff, Deutsch Bank, respectfully requests that this Court:

1. Find that this Court has no jurisdiction to hear this action; and
2. Remand the action to the Housing Court Department of the Trial Court of Massachusetts, Worcester County Division; and
3. Grant such other and further relief as it deems just and proper.

**DEUTSCHE BANK NATIONAL TRUST
COMPANY, AS CUSTODIAN OR
TRUSTEE, f/k/a BANKERS TRUST
COMPANY OF CALIFORNIA, N.A.,**

By its attorneys,



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Dated: January 15, 2004